

**HUMAN SERVICES DEPARTMENT[441]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 225D.2, the Department of Human Services rescinds Chapter 22, “Standards for Services to Persons with Mental Illness, Chronic Mental Illness, Mental Retardation, Developmental Disabilities, or Brain Injury,” and adopts new Chapter 22, “Autism Support Program,” Iowa Administrative Code.

Existing Chapter 22 does not conform with the legislative intent consistent with the state’s mental health and disability redesign process. As a direct result, the existing chapter is rescinded and a new chapter is adopted.

In Iowa Code chapter 225D, the 2013 Iowa General Assembly established a new Autism Support Program to provide funding for applied behavioral analysis (ABA) services to children under the age of nine with a diagnosis of autism who are not otherwise eligible for such services through Medicaid or private health insurance. In developing the rules, the Department consulted with an expert panel including parents of children with a diagnosis of autism, providers of services, and other stakeholders. The rules identify financial and diagnostic eligibility standards, application and authorization processes, provider network qualifications, and appeal processes for the program.

Notice of Intended Action for these rules was published in the Iowa Administrative Bulletin as **ARC 1184C** on November 13, 2013.

The Department received comments from one group of respondents during the public comment period. The comments and corresponding responses from the Department are as follows:

The first comment addressed eligibility and application requirements found in rule 441—22.2(225D). The comment stated that the administrative rules should include language that clarifies who can provide diagnostic assessments. The rules should also address whether providers that make diagnostic assessments can also provide treatment services under the Autism Support Fund.

Department response: Iowa Code section 225D.1 provides a definition of “diagnostic assessment of autism” that specifically identifies the types of providers who may provide a diagnosis of autism for purposes of eligibility for the Autism Support Program. If the provider who provides diagnostic services meets the qualifications of an autism service provider and joins the provider network, there is nothing in law or rule that would prohibit the person who provides the diagnosis from also providing applied behavioral analysis under the Autism Support Program. No changes were made as a result of this comment.

The second comment pertained to use of the term “integrated health home” in the rules and stated that clarity is needed regarding the term. The respondent suggested that “pediatric integrated health home” would be more appropriate terminology.

Department response: The term “pediatric integrated health home” is not defined in the Iowa Administrative Code or the Iowa Code. Iowa Code section 225D.2 refers to “integrated health home.” To preserve consistency between the statute and the rules, the Department did not make any changes as a result of this comment.

The third comment asked if it was the intent of the Legislature to allow for families to be served by other types of integrated health homes (such as integrated health homes for children with complex chronic health conditions), if such other types are developed. As currently stated, it is unclear as to whether or not the language restricts the types of integrated health homes to only pediatric integrated health homes for children with a serious emotional disorder (SED).

Department response: The Department does not know the intent of the Legislature regarding future utilization of different types of integrated health homes in the Autism Support Program. The rules are written to reflect that eligible individuals utilizing an integrated health home for care coordination would utilize an integrated health home for children with an SED. Currently, there are no other integrated health home programs for children. No changes were made as a result of this comment.

The fourth comment concerned rule 441—22.5(225D), initial service authorization and renewal of service authorization, and stated that clarity is needed regarding acceptable methodology/tools to obtain a baseline standardized assessment score and show progress. Reference in the rules is needed to require consultation with the Iowa Expert Panel for recommendations regarding assessment tools and processes to measure a child's progress.

Department response: The Department has placed responsibility for selection of an appropriate standardized assessment tool with the Administrator of the Autism Support Program to be selected through a Request for Proposal (RFP). The standardized assessment tool must be approved by the Department prior to program implementation. No changes were made as a result of this comment.

The fifth comment concerned rule 441—22.6(225D), provider network, and stated that due to the extreme shortage of Board Certified Behavior Analyst (BCBA) providers in Iowa, latitude should be given to allow providers under the supervision of a BCBA provider to also provide services. More language is needed to allow licensed health professionals who do not hold a current certification as BCBAs but who can provide evidence of appropriate training in ABA to be allowed to oversee treatment services. The commenter recommended adding the following statement to the end of the first sentence in subrule 22.5(5): “or who is a licensed health professional with ABA training as described in paragraph 22.6(1)‘b.’”

Department response: The rule allows the treatment plans to include services to be provided by non-BCBA staff under the supervision of a BCBA. The Department finds it is important to the fidelity of the program that individuals not credentialed as BCBAs are supervised by individuals who have the credentials of a BCBA. No changes were made as a result of this comment.

The sixth comment stated that clarity is needed regarding the following paragraph in subrule 22.6(1): “A provider shall be deemed eligible to participate in the autism support program provider network if the autism service provider meets the standards in paragraph 22.6(1)‘a’ or ‘b’ and the provider is approved to provide applied behavioral analysis services through Medicaid.”

Department response: The purpose of the proposed paragraph was to streamline inclusion of providers in the provider network by allowing a provider to be deemed eligible to participate in the Autism Support Program provider network if the provider is already approved to provide Medicaid-funded ABA and either holds a BCBA certification or is licensed as a health professional as defined under Iowa Code chapter 147 and also meets the other stated requirements. Public comments indicate that it appeared that a provider had to be approved by Medicaid in order to join the Autism Support Program provider network, which is not accurate. In response, subrule 22.6(1) was revised for clarity.

The seventh comment stated that specificity is needed to determine which licensed health professionals are appropriate to serve children and youth with autism spectrum disorder (ASD). Not all health professions listed under Iowa Code chapter 147 are appropriate.

Department response: Iowa Code section 225D.1(3) states that a health professional licensed under Iowa Code chapter 147 who provides applied behavioral analysis services and is approved as a member of the provider network by the Department meets the qualifications of an autism service provider. The Department agrees that not all health professionals licensed under Iowa Code chapter 147 are qualified to provide ABA services. The Department specified in the proposed rules the following requirement for inclusion of a health professional in the Autism Support Program provider network: a health professional licensed under Iowa Code chapter 147 must also provide evidence of training in ABA and meet criteria of a mental health professional under Iowa Code section 228.1. No changes were made as a result of this comment.

The eighth comment concerned rates to be paid for applied behavioral analysis services by the Autism Support Program. The comment stated that in rule 441—22.7(225D), financial management of the program, the text “contracted rate currently paid by Medicaid for applied behavioral analysis services” requires clarification. Medicaid currently pays different rates for ABA services delivered through a variety of programs. Information about Medicaid reimbursement rates should be accessible to providers, and the rates should reflect the type of ABA services provided. For example, the ABA procedures that are reimbursed by the Autism Support Fund should not be restricted to daily skill acquisition, but rather should also include functional analysis and function-based treatment for reducing challenging behaviors.

Department response: The Department is not aware of any rates in the Medicaid program specifically established for the reimbursement of ABA services other than those established through the managed care behavioral health program. Medicaid rates are public information. There is nothing in the rules that limits the type of ABA procedures provided under the Autism Support Program. No changes were made as a result of this comment.

The ninth comment concerned qualifications for decisions regarding authorization of services. The comment stated that the Administrator of the program should be required to utilize staff who exhibit knowledge of ASD and ABA in order to make sound decisions regarding payment.

Department response: The Department expects the Administrator of the program, selected through the RFP process, to provide sufficiently trained and experienced staff to administer all aspects of the Autism Support Program. No changes were made as a result of this comment.

The tenth comment stated that although there is mention of telehealth in 2013 Iowa Acts, Senate File 446, there is no mention of telehealth in the administrative rules. Telehealth should be recognized as an acceptable method of delivery of services as specified in the law. If the intent of the legislation was to limit telehealth service providers in the program to Iowa autism service providers, the rules should also reflect that.

Department response: Telehealth is referenced in Iowa Code section 225D.2(2) as an acceptable method of service coordination and delivery for the Autism Support Program. There is nothing in the statute or rules that would restrict the use of telehealth services in the Autism Support Program or that limits providers of such services to Iowa autism service providers. A member of the Autism Support Program provider network is required to meet the standards identified in the Iowa Code and in the rules for autism service providers regardless of the method of service delivery. It is the responsibility of the Administrator of the program to ensure that all providers meet standards in the Iowa Code and the rules for provision of services to eligible individuals. No changes were made as a result of this comment.

The Mental Health and Disability Services Commission adopted these rules on January 16, 2014.

These rules do not provide for waivers in specified situations because requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

After analysis and review of this rule making, there could be an impact on private sector jobs. Due to the limited number of professionals who can provide applied behavioral analysis services, it is expected that the demand for such services will exceed the system's current ability to provide those services. This could lead to greater employment opportunities for individuals trained to provide and supervise applied behavioral analysis services. The impact is expected to be statewide, although rural areas have more limited access to professionals who provide applied behavioral analysis than urban areas.

These rules are intended to implement 2013 Iowa Acts, Senate File 446, sections 82 to 85 [Iowa Code chapter 225D].

These rules will become effective April 1, 2014.

The following amendment is adopted.

Rescind 441—Chapter 22 and adopt the following **new** chapter in lieu thereof:

## CHAPTER 22 AUTISM SUPPORT PROGRAM

### PREAMBLE

These rules provide for definitions of diagnostic and financial eligibility, provider qualifications, and appeal procedures related to the autism support program created in 2013 Iowa Acts, Senate File 446, division XVII. The purpose of the autism support program is to provide funding for applied behavioral analysis services and care coordination for children with a diagnosis of autism who meet certain financial and clinical eligibility criteria.

#### **441—22.1(225D) Definitions.**

*“Administrator”* means the entity selected by the department through a request for proposal process or other contractual arrangement to administer the autism support program.

*“Applicant”* means an individual on whose behalf an application has been submitted but who has not been identified as an eligible individual, or an individual who has received a denial of eligibility for the program.

*“Applied behavioral analysis”* or *“ABA”* means the same as defined in Iowa Code section 225D.1.

*“Autism”* means autism spectrum disorders as defined in Iowa Code section 514C.28.

*“Autism service provider”* means a person providing applied behavioral analysis, who meets the following criteria:

1. Is certified as a behavior analyst by the Behavior Analyst Certification Board or is a health professional licensed under Iowa Code chapter 147.

2. Is approved as a member of the provider network by the department.

*“Autism support fund”* or *“fund”* means the autism support fund created in Iowa Code section 225D.2.

*“Autism support program”* or *“program”* means the program created in Iowa Code section 225D.2 to provide funding for applied behavioral analysis and care coordination for eligible individuals with a diagnosis of autism.

*“Clinically relevant”* means medically necessary and resulting in the development, maintenance, or restoration, to the maximum extent practicable, of the functioning of an individual.

*“Department”* means the department of human services.

*“Diagnostic assessment of autism”* means medically necessary assessment, evaluations, or tests performed by a licensed child psychiatrist, developmental pediatrician, or clinical psychologist.

*“Eligible individual”* means a child less than nine years of age who has been diagnosed with autism based on a diagnostic assessment of autism, is not otherwise eligible for coverage for applied behavioral analysis treatment under the medical assistance program, Iowa Code section 514C.28, or private insurance coverage, and whose household income does not exceed 400 percent of the federal poverty level.

*“Federal poverty level”* means the most recently revised poverty income guidelines published by the United States Department of Health and Human Services.

*“Household income”* means household income as determined using the modified adjusted gross income methodology pursuant to Section 2002 of the federal Patient Protection and Affordable Care Act, Pub. L. No. 111-148.

*“Integrated health home”* means the same as defined in 441—subrule 78.53(1).

*“Maximum amount of treatment”* means a maximum of 24 months of applied behavioral analysis funded by the autism support program. Months of service are not required to be consecutive.

*“Maximum annual benefit”* means a maximum annual benefit amount of \$36,000 per year for autism support program services for an eligible individual. For the purposes of this program, the annual benefit is calculated by using as a starting date the date the first service is reimbursed by the program and an ending date 12 months from the starting date. Expenditures included in the calculation of the maximum annual benefit include reimbursements to autism service providers for provision of applied behavioral analysis and reimbursements to integrated health homes for costs of care coordination. Cost-sharing paid by the eligible individual is not included in the calculation of the individual’s annual benefit.

*“Medical assistance”* or *“Medicaid”* means assistance provided under the medical assistance program pursuant to Iowa Code chapter 249A and Title XIX of the Social Security Act.

*“Month of service”* means any month in which an individual receives at least one billable unit of applied behavioral analysis service funded by the autism support program.

*“Provider network”* means a network of autism service providers approved by the department to provide services to eligible individuals through the autism support program.

*“Regional autism assistance program”* or *“RAP”* means the regional autism assistance program created in Iowa Code section 256.35.

*“Treatment plan”* means a plan for the treatment of autism developed by a licensed physician or licensed psychologist pursuant to a comprehensive evaluation or reevaluation performed in consultation with the patient and the patient’s representative.

**441—22.2(225D) Eligibility and application requirements.** To be determined eligible for funding for services through the autism support program, an individual must meet the following requirements:

**22.2(1)** An individual shall submit an application to the administrator of the program using a standardized application form available through the administrator's and the department's Web sites, members of the provider network, the regional autism assistance program, and advocacy organizations.

**22.2(2)** An applicant for autism program services shall be less than the age of nine at the time of application for the program. Proof of age must be provided at the time of application. An individual who reaches the age of nine prior to receipt of the maximum benefits of the program may continue to receive services from the program in accordance with the individual's treatment plan, up to a maximum of 24 months of applied behavioral analysis treatment.

**22.2(3)** An individual shall have a diagnosis of autism based on a diagnostic assessment of autism dated 24 months or less from the date of application for the program.

**22.2(4)** An individual shall be determined ineligible for coverage of applied behavioral analysis services under the medical assistance program, Iowa Code section 514C.28, or private insurance coverage. Proof of insurance coverage and noneligibility for coverage for applied behavioral analysis shall be provided at the time of application.

**22.2(5)** An individual shall have a household income equal to or less than 400 percent of the federal poverty level. Information needed to determine household income using modified adjusted gross income methodology shall be identified on the program application. The information shall be provided at the time of application.

**22.2(6)** The administrator shall provide to the parent or guardian a written notice of decision determining initial eligibility or denial within 30 calendar days of receipt of the application.

**22.2(7)** The administrator shall refer an applicant determined to be an eligible individual to care coordination services. The referral will occur within 5 business days of determination of eligibility for the program. Care coordination services will be provided by the University of Iowa regional autism assistance program (RAP) or an integrated health home. Eligible individuals who reside in counties where integrated health homes for children with a serious emotional disturbance are operational may choose to receive care coordination through the University of Iowa RAP program or an integrated health home that serves residents of the eligible individual's county of residence. Care coordination is not required as a condition of receiving services through the autism support program.

**22.2(8)** For individuals determined eligible for the program but unable to access services due to lack of available providers, the administrator shall maintain a list of such individuals and shall work to connect eligible individuals on the list to network providers.

**22.2(9)** The administrator shall stop processing applications at the point where available funds are fully obligated for eligible individuals and additional eligible individuals would cause expenditures in excess of the funds available to the program. The administrator shall maintain a waiting list of individuals denied access to the program due to lack of available funds. If additional funds become available, the administrator shall contact individuals on the list in order of the earliest date and time of the receipt of the original application. The applicant shall be allowed 30 calendar days to submit an updated application and any required information needed to determine eligibility. If the applicant does not submit required information, the applicant will be denied eligibility and removed from the waiting list maintained for individuals denied access to the program due to lack of funding. The age of the applicant at the time of the most recent application will be used when determining eligibility for the program.

**441—22.3(225D) Cost-sharing requirements and graduated schedule of cost sharing.**

**22.3(1)** An individual with a household income equal to or greater than 200 percent of the federal poverty level, up to a maximum of 400 percent of the federal poverty level, shall be subject to cost-sharing requirements. Cost sharing shall be implemented incrementally up to a maximum of 10 percent of the costs of the services provided through the program for an individual with a household income equal to 400 percent of the federal poverty level. The following is a chart of the cost-sharing requirements:

Family income as a % of FPL	% of cost-sharing of service costs	Family income as a % of FPL	% of cost-sharing of service costs
200%	.476%	310%	5.712%
210%	.952%	320%	6.188%
220%	1.428%	330%	6.664%
230%	1.904%	340%	7.14%
240%	2.38%	350%	7.616%
250%	2.856%	360%	8.092%
260%	3.332%	370%	8.568%
270%	3.808%	380%	9.04%
280%	4.284%	390%	9.516%
290%	4.76%	400%	9.992%
300%	5.236%		

**22.3(2)** An individual may request an exemption from cost sharing due to financial hardship. To qualify for an exemption, an individual shall submit written documentation to the administrator that the individual or the individual's family does not have the financial means to fulfill cost-sharing requirements.

**22.3(3)** Criteria to determine financial hardship include, but are not limited to, a change in income, change in employment of the parent or guardian, additional medical expenditures, other family members' health conditions, or other conditions which may affect the ability to fulfill cost-sharing requirements. The administrator shall provide a written determination regarding eligibility for exemption from cost-sharing requirements. Eligibility for exemption from cost sharing expires at the end of the financial eligibility period.

**441—22.4(225D) Review of financial eligibility, cost-sharing requirements, exemption from cost sharing, and disenrollment in the program.**

**22.4(1)** An eligible individual's continued financial eligibility for the program, cost-sharing requirements, and exemption from cost sharing shall be determined on an annual basis.

**22.4(2)** The administrator shall request needed information from the eligible individual's parent or guardian for redetermination of financial eligibility, cost-sharing requirements, and exemption from cost sharing at least 30 days prior to the expiration of the eligible individual's eligibility period. The notice requesting information needed for renewal of eligibility shall include the ending date of eligibility for services.

**22.4(3)** The administrator shall provide a written notice of decision determining ongoing eligibility or denial within 15 calendar days of receipt of the continued financial eligibility documentation.

**22.4(4)** If the signed application and verification of continuing eligibility are not received by the administrator by the last working day of the renewal month, the individual's eligibility for the program shall be terminated.

**22.4(5)** Reasons for disenrollment in the autism support program include:

- a. Death of the eligible individual.
- b. The family no longer meets one or more of the eligibility criteria outlined in rule 441—22.2(225D).
- c. The parent or legal guardian has failed to provide information required for redetermination of eligibility.
- d. The eligible individual has failed to access authorized services for a period of three consecutive months and has not made arrangements with the autism service provider or administrator to access authorized services.
- e. No funds are appropriated for the autism support program.

**441—22.5(225D) Initial service authorization and renewal of service authorization.**

**22.5(1)** All services reimbursed through the program shall be prior-authorized by the administrator.

**22.5(2)** An autism service provider shall submit an initial treatment plan to the administrator specifying a plan of treatment for a period of no more than six months. The initial treatment plan shall specify the amount of units of applied behavioral analysis services requested for the eligible individual and include a baseline standardized assessment score.

**22.5(3)** Family engagement and participation are required for participation in the autism support program. Treatment plans shall identify specific activities and responsibilities of parents or guardians in the treatment plan.

**22.5(4)** The treatment plan shall reflect the autism service provider's engagement with the school in which the eligible individual is enrolled. Treatment plans shall identify specific actions taken by the autism service provider to engage the eligible individual's school and the results of such actions.

**22.5(5)** The treatment plan may include services provided by staff with a minimum of a bachelor's degree in a human services or education field, working under the supervision of an autism service provider who is board-certified as a behavior analyst. The treatment plan shall identify which services shall be provided directly by the autism service provider and which services shall be provided by staff under the supervision of the autism service provider.

**22.5(6)** For renewal or modification of service authorizations, the autism service provider shall submit an updated plan of treatment with a request for the number of units of applied behavioral analysis the provider believes is medically necessary to address the eligible individual's ongoing treatment needs. The autism service provider shall also provide evidence of the eligible individual's progress on identified treatment goals. The administrator shall consider the eligible individual's updated standardized assessment score along with other clinical information when reviewing requests for renewal or modification of service authorizations. Ongoing service authorization requests shall not exceed six months in duration.

**22.5(7)** The administrator shall provide approval, request for modification, or denial within five business days of receipt of all service authorization requests.

**441—22.6(225D) Provider network.** The administrator shall establish and maintain a network of department-approved autism service providers so that applied behavioral analysis services are available to eligible individuals statewide to the maximum extent possible.

**22.6(1)** A provider shall be approved to participate in the autism support program provider network if the provider meets one of the following standards in paragraph 22.6(1) "a," "b" or "c":

*a.* The autism service provider is certified as a behavior analyst by the Behavior Analyst Certification Board; or

*b.* The autism service provider is a health professional licensed under Iowa Code chapter 147. A health professional licensed under Iowa Code chapter 147 who does not hold a current certification as a board-certified behavior analyst shall provide evidence of training in applied behavioral analysis and be licensed as a mental health professional under Iowa Code section 228.1(6); or

*c.* A provider shall be deemed eligible to participate in the autism support program provider network if the autism service provider meets the standards in paragraph 22.6(1) "a" or "b" and the provider is approved to provide applied behavioral analysis services through Medicaid.

**22.6(2)** The administrator's provider network shall accept the rate established by the department through the department's contract with the administrator as payment in full for the services rendered and will not charge eligible individuals any additional fees for services rendered, except for those eligible individuals who are required to pay a portion of the cost of services due to cost-sharing requirements.

**22.6(3)** The administrator is responsible for calculating the cost-sharing amount according to standards established in this chapter.

**22.6(4)** The autism service provider is responsible for collecting the cost-sharing amount from the eligible individual and will only be reimbursed by the administrator for the balance of the service fee minus the amount of cost sharing.

**441—22.7(225D) Financial management of the program.** The autism support program administrator shall:

1. Not take new applications for the program that would cause expenditures of the program to exceed the budgeted amount.
2. Limit expenditure of program funds to services for those individuals determined to be eligible individuals and for related administrative costs.
3. Limit annual expenditures for each eligible individual to the amount identified in Iowa Code section 225D.2(2) “a.”
4. Limit length of service through the program to the amount identified in Iowa Code section 225D.2(2) “b.”
5. Allocate available funds for eligible individuals’ services in a manner that allows for funding for all eligible individuals’ services authorized by the administrator without exceeding the department’s funding limits.
6. Limit payment for applied behavioral analysis services to an hourly or equivalent quarter-hour unit rate that is equal to the contracted rate currently paid by Medicaid for applied behavioral analysis services.
7. Limit payment for integrated health home services to an amount consistent with the monthly per-member per-month amount paid by Medicaid to approved providers of integrated health home services for children with a serious emotional disturbance.
8. Not provide financial compensation to the University of Iowa regional autism assistance program for care coordination services.

**441—22.8(225D) Appeal.** Notice of adverse action and right to appeal shall be given in accordance with 441—Chapter 7.

These rules are intended to implement Iowa Code chapter 225D.

[Filed 1/24/14, effective 4/1/14]

[Published 2/19/14]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 2/19/14.